

**M. T. WORRELL and G. S. RUSSWURM, Appellants, VS. R. S. MCGILL,
Appellee.**

LRSC 2; 1 LLR 63 (1873) (1 January 1873)

[January Term, A. D. 1873.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

An error committed by a party in the execution of a deed, where it does not appear to have been done with a fraudulent design, will not amount to fraud, nor will it vitiate the instrument.

This is a case sent up to the Supreme Court on appeal from the Court of Pleas and Quarter Sessions, Montserrado County.

Upon careful review of the records in this case the court cannot discover the existence of fraud in either of the defendants in the court below (appellants). The defendant (now one of the appellants), G. S. Russwurm, appears to have acted in good faith when he executed the deed to M. T. Worrell, and the error in transferring his right to the property in dispute by metes and bounds, by his own showing, which was admitted as evidence in the court below, was an error of fact, with no intention of fraud, and in this sense it appears M. T. Worrell received the said transfer. The court, however, discovers from the record that the court below erred in founding its judgment or decree upon evidence which said court had ruled out as inadmissible. This is clearly contrary to both law and equity, and as a matter of course vitiates the decree of the court below. The court admits that a co-tenant cannot sell by metes and bounds his right and title in an estate, unless partition be made; and in this respect Russwurm erred. Nevertheless, taking his, Russwurm's, written explanation admitted by the court below, equity demands that all his interest and title in the property, lot 325 in Monrovia, ought to be vested in Moore T. Worrell, for although the deed from Russwurm to Worrell conveyed more than he had a legal right to convey, this does not invalidate the deed, but it is a good and valid conveyance of the amount of interest Russwurm really possessed in the said lot No. 325.

Therefore the court adjudges that the decree of the lower court be reversed, and the deed executed by G. S. Russwurm to Moore T. Worrell is hereby decreed to be a good and valid conveyance to the said Moore T. Worrell of all the right, title and interest the said G. S. Russwurm possessed in the said lot number three hundred and twentyfive in the city of Monrovia, Republic of Liberia; the appellee to pay all costs.